

IF WALLS COULD TALK:

*HOW LANDLORDS FAIL TO OBEY CHILDHOOD LEAD POISONING PREVENTION
LAWS IN BUSHWICK*



A Report by the New York City Coalition to End Lead
Poisoning and Make the Road New York

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"If Walls Could Talk" - About This Report:

Lead-based paint can poison young children. In children, lead can cause learning disabilities, attention deficit disorders, decreased intelligence, nervous system and kidney damage, and other serious health problems that may be permanent.¹ According to the NYC Department of Health and Mental Hygiene ("DHMH"),
"Preventing exposure to lead is the only effective way to ensure that children do not suffer long-term consequences of lead poisoning. Prevention requires reducing the sources of lead in the environment and/or protecting children from exposure to those sources."²

In 2000, the federal government called for eliminating elevated blood lead levels in children (defined as blood lead levels of 10 micrograms of lead per deciliter of blood (" $\mu\text{g}/\text{dL}$ ") or greater) by 2010, primarily through eliminating lead hazards in their homes;³ New York City has adopted this goal as well,⁴ and there is no doubt that much progress has been made in reducing childhood lead poisoning. According to the most recent publicly available data from DHMH, the number of children under age 6 newly identified with blood lead levels $\geq 10 \mu\text{g}/\text{dL}$ decreased by nearly an order of magnitude from 19,232 in 1995 to 1,947 in 2007.⁵ But since only 41% of children are tested for lead as required by law,⁶ the actual number of children with elevated blood lead levels is no doubt significantly higher, and as DHMH recognized in its most recent annual report, "lead poisoning remains a serious public health problem in NYC."⁷

Two important laws should work in tandem to help reduce the possibility of children ingesting lead-based paint and lead-contaminated dust in residential rental properties in New York City. The first is the New York City Childhood Lead Poisoning Prevention Act of 2003, commonly known as Local Law 1 of 2004, which obligates landlords and the City to prevent exposure to lead paint hazards in housing and day care facilities.

Local Law 1 went into effect on August 2, 2004, and imposes certain mandates upon the City's Department of Housing Preservation and Development ("HPD") to timely inspect dwellings for deteriorated lead-based paint hazards in response to either a tenant's specific complaint of lead-based paint hazards or whenever inspecting a dwelling unit with a child under age 6. However, the City had previously estimated that of the estimated 2,000,000 housing units which contained some lead-based paint some 323,000 units are occupied by families with children less than 6 years of age.⁸ The City Council, in enacting Local Law 1, recognized that HPD could not possibly perform routine inspections for lead hazards in all these units, and thus also made it "the responsibility of every owner of a multiple dwelling to investigate dwelling units for lead-based paint hazards

and to address such hazards on a case-by-case basis as the conditions may warrant, taking such actions as are necessary to prevent a child from becoming lead poisoned.”⁹ Among these landlord responsibilities are specific mandates to ascertain whether children under 6 reside in the dwelling,¹⁰ and, upon receiving an affirmative response:

- inspect the dwelling at least annually for lead-based paint hazards,¹¹
- promptly correct lead-based paint hazards,¹²
- use specified safe work practices performed by properly trained personnel when correcting lead-based paint hazards or otherwise disturbing lead-based paint or paint of unknown lead content,¹³
- properly clean up after such work and perform clearance tests for the presence of lead in dust,¹⁴ and
- Provide tenants with the results of inspections¹⁵ and dust tests,¹⁶ as well as educational materials in English and Spanish about their rights and responsibilities under Local Law 1.¹⁷

Local Law 1 also requires that upon the turnover of a vacant apartment, the landlord not only remediate lead hazards but also permanently lead-based paint on window and door friction surfaces, and certify this in writing to the incoming tenant.¹⁸

The other law is the federal Residential Lead-Based Paint Hazard Reduction Act of 1992, which requires landlord to educate tenants by disclosing to them all known facts and documents pertaining to lead-based paint in the dwelling, and also to provide tenants with a federally-approved pamphlet about the dangers of lead-based in the home.¹⁹

Landlords' compliance with these ongoing statutory obligations would seem to be a key component in achieving the City's goal of ending elevated childhood blood leads by the end of 2010. In order to evaluate landlord compliance with the Local Law 1 and the federal disclosure laws, from the Summer of 2007 through the Spring of 2009, the New York City Coalition to end Lead Poisoning (“NYCCELP”) and the community group Make the Road New York (“MRNY”) conducted a survey of 120 tenants in Bushwick, Brooklyn, to learn to what extent their landlords comply with these laws.

Bushwick is a low-income community of color located in the heart of NYC’s so-called “lead belt”: DHMH data has often ranked Bushwick as one of the communities with the largest numbers of children with reported elevated blood lead levels.²⁰ Despite the explicit mandates of these laws to protect children from lead-based paint hazards in rental property, our survey found rampant non-compliance in virtually every aspect of landlord responsibility under these laws.

As we approach the milestone of 5 years since Local Law 1 came into effect, the results of this survey indicate that because many negligent landlords fail to fully comply with their legal responsibilities children in NYC are still not receiving the full benefit of these necessary primary prevention measures, particularly in a low-

income community of color where children are at highest risk of lead poisoning.

The NYC Plan recognized that reducing the number of cases to zero by the end of 2010 will require creative prevention strategies and increased collaboration among governmental and non-governmental organizations.²¹ With that target date just 1½ years away, current trends do not indicate NYC will reach its goal unless we achieve more effective compliance with Local Law 1's comprehensive mandates through enhanced enforcement by City agencies.

A SPECIAL THANKS

We would especially like to thank all of the 120 community members who participated in this study. We would also like to thank all of the members, staff, and interns of Make the Road New York that conducted these surveys. In particular, we would like to thank Elvis Jimenez, Betsy Ortiz, Will Frank, Angel Vera, Irania Sanchez, and Jesse Goldman. In addition, we would like to extend a special thanks to Will Frank for helping compile this report.

NYCCELP

The New York City Coalition to End Lead Poisoning is a NYC wide coalition dedicated to eliminate lead based paint hazards in NYC. It was formed in 1983, in response to widespread noncompliance with lead poisoning prevention laws. NYCCELP's purpose is to educate and advocate for children at risk of lead poisoning in order to eliminate that risk. NYCCELP's most significant constituents are parents of children at risk of lead poisoning. NYCCELP's advocacy has resulted in numerous court decisions directing compliance with lead poisoning prevention laws and interpretation of the law in a manner most protective of children. Many NYCCELP members – both individuals and organizations – vigorously advocated for the enactment of Local Law 1.

MAKE THE ROAD NEW YORK

Make the Road NY is a membership-led organization. MRNY promotes economic justice and participatory democracy by increasing low-income people's power to achieve self-determination through collective action. Its multi-faceted approach includes:

Organizing and Activism to build a stronger community, to make governing institutions subject to democratic community control, and to mobilize resistance to oppression based on race, class, gender, age, national origin, and sexual orientation.

Collaborative Learning to share ideas and experiences, to analyze the root causes of the problems, and to strategize about how to take action together to resolve these problems in a way that values the voice, perspective and contribution of every person.

A Community of Support to provide badly needed services to members and leaders, to draw people into our educational and organizing activities, and to affirm an ethic of cooperation, mutual support, dignity and *animo*.

About the Survey:

The 120 Bushwick residents who participated in this study live in apartments that are protected by Local Law 1 and the federal disclosure laws. The tenants who participated in the survey were chosen at random from both members of MRNY and other members of the community. In order for a tenant to participate in this study, the tenant must:

1. Currently live in a building built before 1960;
2. Reside in a building of three or more units; and
3. Have had children under the age of seven residing in the apartment at some point since January 1st, 2004.

The goal of our study was to measure landlord compliance with the following responsibilities:

1. To provide the tenant with the DHMH and HPD pamphlet entitled "What Every Tenant Should Know About Local Law 1/ "Lo que Todos los Inquilinos Deben Saber sobre la Ley Local 1"
2. To provide the tenant with the federal Environmental Protection Agency ("EPA") pamphlet concerning the risks of lead paint
3. To disclose to tenants information on known lead hazards in the dwellings as required by federal law
4. To inquire as to whether there are children under the age of seven living in the apartment at the initial leasing of the apartment, at lease renewals, and through annual verification processes
5. To provide written certification that certain specified lead hazards have been removed from the apartment prior to an initial lease
6. To annually inspect the apartment for lead hazards and provide tenants with written documentation of the results
7. To use specified safe work practices when removing or disturbing lead-based paint or paint of unknown lead content
8. To hire independent contractors to test for lead dust after work disturbing the lead-based paint (or paint of unknown lead content) has been conducted, and to provide the tenant with the post-remediation lead test results

Summary of Important Findings:

In the **120 surveys**, we found that:

- **92%**, or 110 respondents, reported that their landlords had **FAILED** to **FULLY** comply with their obligations under Local Law 1 and the federal disclosure law.²²
- **59%**, or 68 respondents, reported that their landlord had complied with **NONE** of their obligations under Local Law 1 and the federal disclosure law.

Of those 23 respondents' whose landlords have removed lead-based paint in their apartments,

- **35%**, or 8 respondents, reported that their landlords had failed to use safe work practices, as required by Local Law 1²³, when remediating lead-based paint.

Implications of Our Findings:

Our study indicates widespread non-compliance in a neighborhood with some of the highest reported lead poisoning rates in the City. 92% of the respondents in our study indicated that their landlords had failed to fully comply with their obligations as under Local Law 1 and federal law. Because landlords are failing to conduct annual inspections for lead-based paint hazards, failing to provide tenants with the pertinent information regarding the risks of lead-based paint hazards and their rights under local and federal law, and failing to use safe work practices, children of tenants are still at great risk for lead poisoning.

It is the responsibility of HPD and DHMH to enforce compliance with Local Law 1 and EPA to enforce compliance with the federal lead disclosure laws; without meaningful enforcement of these provisions negligent landlords will continue to violate these laws with impunity.

We evaluated landlords' compliance with these laws in three broad areas: the required tasks at the beginning of the tenancy, annual inspections, and safe work practices.

Beginning of Tenancy

At the beginning of a new tenancy, we found that very few landlords complied with their responsibilities regarding lead-based paint hazards. We found that the great majority of landlords failed to give their tenants the necessary lead prevention pamphlets. 86% of landlords failed to give their tenants DHMH and HPD's pamphlet, "Fix Lead Paint Hazards: What Landlords Must Do and Every Tenant Should Know/ Lo que Todos los Inquilinos Deben Saber Sobre la Ley Local 1." 88% of landlords failed to give their tenants the EPA's pamphlet about lead-based paint hazards. We also discovered that 59% of landlords did not ask their tenants whether there would be children residing in the apartment.

In addition, we found that the majority of landlords did not disclose to their tenants whether they had permanently abated lead paint on window and door friction surfaces and remediated lead-based paint hazards in the apartment. 78% of landlords did not provide their tenants with any records concerning lead-based paint in their apartment, such as prior inspections or test results. Furthermore, 89% of landlords failed to provide written certification that they had removed specified lead-based paint hazards in the apartment.

Annual Notices

We also discovered that the majority of landlords failed to fulfill their annual inspection responsibilities. 86% of landlords failed to inquire annually whether young children reside in the apartment. We also found that only 21% of landlords conducted annual inspections for lead-based paint hazards. Only 12% of those landlords who did conduct annual inspections provided written reports on

the results of such inspections to their tenants.

Remediation Practices

In addition, we found that few landlords actually utilized safe work practices to remove lead-based paint or paint of unknown lead content. 36% of survey participants stated that their landlord did not use safe work practices, as required by Local Law 1 to remediate lead-based paint hazards in their home. 36% of participants reported that their landlords failed to contain lead dust with plastic sheeting. In addition, 71% of respondents reported that their landlord did not conduct lead dust wipes after removing the lead paint. 88% of the landlords failed to provide the tenants with the results of the tests after they were conducted.

Two Case Studies of Landlords Failing to Comply with Local Law 1

Unsafe Work Practices: The Case of Maria Cabrera

One example of unsafe work practices is that of Maria Cabrera, her husband, and their 5 year old son Kevin at Apt. 3L 274 Irving Ave, Brooklyn. Because of the lead paint in their apartment, their son Kevin has an elevated lead level of 9 µg/dl. In December 2004, the landlord's workers' did not follow safe work practices when they removed the lead paint in the kitchen, the living room, and the bathroom. The workers failed to seal in the rooms with plastic or cover the floor. After the workers left, Ms. Cabrera entered the kitchen and found that everything was covered with white paint dust. Ms. Cabrera never received post-remediation results from her landlord indicating whether or not the apartment had been adequately cleaned for lead dust.



Maria Cabrera with her son Kevin

Failure to Inspect and Notify Tenants: The Case of Luisa Mejia

Luisa Mejia lives at 1406 Putnam Ave., Brooklyn, NY, with her son and three grandchildren. Even though Ms. Mejia lives with three children under the age of six in a six-unit building that was built before 1960, her landlord has never checked for lead paint in her apartment nor given her the necessary safety pamphlets warning her about the risks of lead poisoning. After living in the apartment for more than 15 years, it was only in May of 2009, that she discovered that there was lead paint in her apartment. HPD discovered lead paint when they inspected for other housing violations in her apartment. She is currently waiting to get back the results of blood tests for her grandchildren of whether or not they have elevated lead levels.



Luisa Mejia

Recommendations:

1. HPD must use its power under Local Law 1 to perform sample audits to determine landlords' compliance with Local Law 1 mandates.²⁴ HPD must also insure that violations are vigorously prosecuted and the results of those prosecutions publicized. For example, HPD should enforce the Local Law 1 provision that subjects landlords to an immediately hazardous "C" violation and fines where they fail to perform the required activities at turnover of a vacant apartment. Likewise, HPD should also enforce the Local Law 1 provision that makes it a misdemeanor, punishable by a fine of \$500 or imprisonment for up to 6 months (or both), if a landlord fails to inquire for the presence of young children, inspect at least annually for lead-based paint hazards, provide the tenant with written documentation of the results of that inspection, or provide the tenant with the City pamphlet. If HPD fails to fully enforce Local Law 1, the City will continue to permit, and indeed, encourage, negligent landlords to violate with impunity their statutory duty to protect their tenants' children from lifelong brain injuries from ingested lead-based paint chips and dust.
2. DHMH also has the power to investigate compliance with safe work practices in any premises where lead-based paint or paint of unknown lead content is being disturbed while young children are in residence.²⁵ DHMH needs to not only respond to specific tenant complaints during the removal of cited lead violations, but should also conduct random spot checks – particularly in "lead belt" neighborhoods such as Bushwick – of landlord compliance with safe work practices in other situations where landlords are disturbing lead-based paint or paint of unknown lead content.
3. The federal EPA should also perform random audits of compliance with the lead disclosure laws in neighborhoods where childhood lead poisoning is prevalent.
4. All three agencies should conduct a joint publicity campaign to remind landlords of their obligations under Local Law 1 and the federal disclosure laws.

Appendix 1
Lead Survey Results

NYCCELP's Lead Survey					
Name:					
Telephone#:					
		Yes	No	Don't Know	% of Landlord non-compliance
	Are there 3 or more apartments in your building?				
	Was your building built before 1960?				
	Have you had children less than 7 years old reside in your apt. at any time since Jan. 1, 2004?				
Beginning of Tenancy					
	Did you begin tenancy before Jan.1, 2004?				
<i>If the response is No do not fill out the rest of this Section and Skip to the next section</i>					
	Did the Landlord give you a pamphlet entitled "What every Tenant Should Know About Local Law 1?"	11	70	3	86%
	Did the Landlord Give you the EPA pamphlet on lead hazards?	10	72	1	88%
	Did the Landlord Give you a Federal Lead Disclosure Statement form?	7	60	2	90%

	Did the Landlord give you a form asking about the presence of children under 7 years of age?	37	53		59%
	Did the Landlord give you any records concerning lead paint, past lead paint tests or violations?	4	14	1	78%
	Did the landlord give you a written certification that he/she had abated lead hazards (either with the lease or when you moved in)?	10	78	4	89%
Annual Notices and Inspection					
	Has the Landlord given you annual notices as to whether or not you have children under age 7 in the apartment?	13	76	2	86%
	Has the Landlord annually inspected your apartment for lead based paint hazards?	18	69	5	79%
	If so, has the Landlord given you a written report of those inspections?	9	65		88%
Repair of Peeling Paint					
	If your landlord knows about lead paint, has the landlord corrected peeling paint within 1 month?	8	4	3	
	In 2 months?	7	2	1	
	In more than 3 months?	2	1	1	
	Was the dust contained with plastic sheeting?	9	5	6	36%
	Was the dust cleaned up properly (wet sweep, mop, HEPA vacuum)?	9	5	5	36%
	Did the landlord conduct dust samples after correcting peeling paint?	6	8	4	71%
	Do you know if the person or company taking the dust samples was independent of the landlord and contractor?	4	6	8	60%
	Has the landlord given you written results of the dust sample tests?	2	15	4	88%

¹ U.S. Environmental Protection Agency, “Protect Your Family from Lead in your Home.” (2005).

² DHMH, New York City Plan to Eliminate Childhood Lead Poisoning, (“NYC Plan”) (December 2005) at iv.

³ President’s Task Force on Environmental Health Risks and Safety Risks to Children, Eliminating Childhood Lead Poisoning: A Federal Strategy Targeting Lead Paint Hazards, (February 2000) at 3.

⁴ NYC Plan, at iv.

⁵ DHMH, Report to the New York City Council on Progress in Preventing Childhood Lead Poisoning in New York City, 2007, (Sept. 30, 2008) at 2.

⁶ DHMH, Preventing Lead Poisoning in New York City, Annual Report 2006 (March 2008) at 6.

⁷ Id. at 5.

⁸ NYC HPD and Department of Health, “Request for Grant Assistance for Lead-based Paint Hazard Control” (to the federal Department of Housing and Urban Development) , July 31, 1997, at 18-19

⁹ Local Law 1 of 2004, New York City Administrative Code § 27-2056.1

¹⁰ New York City Administrative Code § 27-2056.4(a),(d),(e)

¹¹ New York City Administrative Code § 27-2056.4(a)

¹² New York City Administrative Code § 27-2056.3

¹³ New York City Administrative Code § 27-2056.11(a)

¹⁴ New York City Administrative Code § 27-2056.11(d)

¹⁵ New York City Administrative Code § 27-2056.4(f)

¹⁶ New York City Administrative Code § 27-2056.11(d)

¹⁷ New York City Administrative Code § 27-2056.4(c); § 17-179(b)

¹⁸ New York City Administrative Code § 27-2056.8; 28 Rules of the City of New York § 11-05

¹⁹ 28 USC § 4852d; 40 C.F.R. §§ 745.107, 745.113

²⁰ For example, in 2004, the year Local Law 1 went into effect, some 166 children under age 6 were newly identified with blood lead levels of ≥ 10 $\mu\text{g/dL}$. DHMH, New York City Childhood Lead Poisoning Prevention Program Annual Report 2004 (May 2006) Table A-4, at 45.

²¹ NYC Plan, at 8.

²² Note: For the purposes of the survey, to not “fully comply” with Local Law 1 means that the landlord failed to fulfill at least one of their obligations within Local Law 1

²³ “Fix Lead Paint Hazards: What Landlords Must Do and Every Tenant Should Know” (2007).

²⁴ New York City Administrative Code § 27-2056.5(h). HPD can audit compliance at any time, and certainly would have ample reason to do so when it has placed, for example, lead paint violations in a home that ought to have recently had an annual landlord inspection, or lead paint violations in a home where the family moved in at some point after August 2, 2004.

²⁵ NYC Health Code § 173.14(f).